

IN THE UNITED STATES BANKRUPTCY COURT FOR
THE EASTERN DISTRICT OF TENNESSEE

IN RE)	
)	NO. 1-88-00033
SOUTHWEST EQUIPMENT RENTAL, INC.))	
d.b.a. SOUTHWEST MOTOR FREIGHT))	
)	Chapter 7
Debtor)	

M E M O R A N D U M

This case is before the court upon the trustee's objection to Claim No. 818 of the Internal Revenue Service ("IRS"). The facts are undisputed and are set out in the briefs of the parties. Essentially, the IRS possesses a sizable claim against the estate that is secured by a federal tax lien. Although at the time the debtor's petition was filed, the estate had no assets against which the tax lien could attach, the trustee is currently pursuing a number of preference and fraudulent conveyance actions, some of which have already resulted in recoveries for the estate. The IRS claims that any postpetition recoveries are subject to its tax lien. The trustee argues the tax lien does not extend to postpetition recoveries by the trustee.

The IRS's tax lien is a statutory lien created by § 6321 of the Internal Revenue Code. 26 U.S.C.A. § 6321 (West 1989). The tax lien reaches all property or rights to property of the taxpayer, including property acquired after the date of assessment. *Glass City Bank v. United States*, 326 U.S. 265 (1945). Because it is a statutory lien, and therefore not a lien consensually granted

by the debtor pursuant to a security agreement, it is not subject to the provisions of § 552(a) of the Bankruptcy Code which provides that "property acquired by the estate or by the debtor after commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before commencement of the case." 11 U.S.C.A. § 552(a) (West 1993); *United States v. Booth Tow Servs.*, 64 B.R. 539, 542 (W.D. Mo. 1985); *In re Frost*, 19 B.R. 804, 808 (Bankr. D. Kansas 1982), *rev'd on other grounds*, 47 B.R. 961 (D. Kan. 1985).

The trustee does not contend § 552(a) limits the IRS's tax lien to the debtor's prepetition property. Rather, the trustee seeks to remove postpetition recoveries from the effect of the tax lien by arguing (1) the tax lien is void pursuant to § 506(d) of the Bankruptcy Code; and (2) the tax lien does not reach assets acquired by the estate after the filing of the bankruptcy petition.

The trustee's first argument presupposes that a secured creditor's lien in a chapter 7 case can be voided or "stripped" to the extent of the value of any collateral securing the claim. This argument relies upon the purported interplay between the provisions of §§ 506(a) and 506(d) of the Bankruptcy Code. 11 U.S.C.A. §§ 505(a), (d) (West 1993). Pursuant to § 506(a), a claim allowed under § 502 is bifurcated into classes of secured claims and unsecured claims. Generally, under § 506(a) a claim is an allowed secured claim to the extent of the value of the collateral and an unsecured claim to the extent of any deficiency. Having determined

the allowed secured portion of the claim, one then turns to the provisions of § 506(d) which provide that to the extent a claim is objected to, and is not an allowed secured claim, such lien is void.

The trustee contends the value of the secured portion of the IRS claim should be determined as of the date the bankruptcy petition was filed. At that time, the trustee argues the value of the assets securing the IRS claim was zero and the IRS would not be entitled to an allowed secured claim. Hence, the trustee concludes that pursuant to § 506(d), the IRS's tax lien is void and cannot attach to after acquired property.

The trustee has cited a number of cases that support his theory the tax lien can be voided pursuant to § 506(d) after determining the extent of the allowed secured claim under § 506(a). See *In re May Reporting Servs.*, 115 B.R. 652 (Bankr. S. Dak. 1990); *In re Dente/Pender*, 60 B.R. 164 (Bankr. M.D. Fla. 1986); *In re Frost*, 19 B.R. 804 (Bankr. D. Kan. 1982), *rev'd on other grounds*, 47 B.R. 961 (D. Kan. 1985). The problem with this argument is that it overlooks *Dewsnup v. Timm*, 112 S. Ct. 773 (1992), a Supreme Court case that dealt directly with the issue of lien stripping under § 506(d) in a chapter 7 case.

Noting the term "allowed secured claim" might arguably have the same meaning for purposes of § 506(d) that it does for § 506 (a), the Court nevertheless found the terminology in § 506 to be

ambiguous. Consequently, it was the Court's view that given the ambiguity, it was not convinced that Congress intended to depart from the pre-bankruptcy Code rules that liens pass through bankruptcy unaffected. It concluded that § 506(d) allows lien avoidance only if the underlying claim is disallowed, and not if a portion of the claim is deemed unsecured by operation of § 506(a). Cases subsequent to *Dewsnup* have relied upon *Dewsnup* in refusing to void tax liens on the basis of §§ 506(a) and 506(d). See *Warner v. United States (In re Warner)*, 146 B.R. 253 (N.D. Cal. 1992); *Koppersmith v. United States (In re Koppersmith)*, 156 B.R. 537 (Bankr. S.D. Tex. 1993); *Matter of Fink*, 153 B.R. 883 (Bankr. D. Neb. 1993). Similarly, the *Dewsnup* holding precludes the voiding of the IRS's tax lien in this case under § 506.

The trustee also argues that even if the IRS's tax lien is not voided under § 506(d), it does not attach to postpetition property of the debtor. The court disagrees. The trustee points to no other provision of the Bankruptcy Code that would void the IRS tax lien. In *In re National Financial Alternatives*, 96 B.R. 844 (Bankr. N.D. Ill. 1989), the court had to determine the relative priority between a secured creditor and the IRS asserting a tax lien. In the course of its opinion, the court noted that "to the extent that the tax lien in this case is not voided pursuant to § 506(d) of the Bankruptcy Code, it would continue to attach to property obtained by NFA [the debtor in possession] after the commencement of the case, subject to any interest of the Bank in

post-petition proceeds allowed under § 6323(c) of the Internal Revenue Code." *Id.* at 849. Because under *Dewsnup* the tax lien in this case is not voided pursuant to § 506 (d), it would continue to attach to postpetition property acquired by the debtor's estate.

The trustee relies upon *In re May Reporting Servs.*, 115 B.R. 652 (Bankr. S. Dak. 1990), in arguing the tax lien does not extend to postpetition property of the debtor. In *May Reporting*, the IRS and another creditor were battling over which creditor was entitled to priority in accounts receivable received by the debtor after the filing of the bankruptcy petition. The court stated "to the extent that the IRS's tax lien is not voided under 11 U.S.C. § 506 (d), it continues to attach to property obtained by May after commencement of this case, subject to any interest of First Bank in post-petition proceeds allowed per 26 U.S.C. 6323(c)." *Id.* at 657. The court went on to state, "[t]he filing of a bankruptcy petition, however, creates a separate estate constituting the debtor's property . . . The separate estate, bankruptcy equities entitling the debtor to a fresh start, and precedence sever the interest of both creditors in post-petition accounts receivable absent traceable pre-petition proceeds." *Id.* at 657-58. The court cited no statute or case authority that supported the proposition the tax lien would not attach to postpetition property recovered by the debtor's estate.

To the extent the *May Reporting* court was asserting that the bankruptcy estate is a separate entity from the taxpayer and

therefore properties acquired by the estate postpetition cannot secure a prepetition tax obligation, the court rejects this reasoning. If such were the case, § 552 of the Bankruptcy Code would be superfluous. As the court stated in *In re National Financial Alternative*, "[i]f pre-petition liens generally did not attach to property acquired by a debtor post-petition, because the debtor in possession (or the estate) is a separate entity, then § 552 would be entirely unnecessary." *Id.* at 849 n.10. The court went on to explain in some detail how such a rule would also place an impossible burden on the IRS in attempting to enforce tax liens against accounts receivable or other impermanent assets. *Id.*

Finally, the trustee argues that the IRS tax lien should not cover preference and fraudulent conveyance recoveries because of policy reasons. While policy arguments may be made by both sides on this issue, the court must follow what it perceives the law to be regardless of what it thinks the law ought to be. Given the fact that neither § 552 nor § 506 cuts off the IRS tax lien, the court is of the opinion that the IRS maintains its tax lien with respect to postpetition recoveries by the estate. *Cf. Claussen Concrete Co. v. Walker (Matter of Lively)*, 74 B.R. 238 (Bankr. S.D. Ga. 1987) (judgment lien enforceable against property of estate recovered by trustee for benefit of estate after filing of debtor's bankruptcy petition).

Accordingly, the trustee's objection to the IRS claim will be overruled. An appropriate order will enter.

JOHN C. COOK
United States Bankruptcy Judge